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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/591,630	06/08/2007	Darren John Hotchkin	043153-9104-00	3309
23409 7590 08/03/2011 MICHAEL BEST & FRIEDRICH LLP 100 E WISCONSIN AVENUE Suite 3300 MILWAUKEE, WI 53202				
EXAMINER ADDIE, RAYMOND W				
ART UNIT 3671		PAPER NUMBER		
NOTIFICATION DATE 08/03/2011		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mkeipdocket@michaelbest.com

Office Action Summary

Application No.

10/591,630

Applicant(s)

HOTCHKIN, DARREN JOHN

Examiner

RAYMOND ADDIE

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 June 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3, 6, 7, 9-12, 14-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 6, 7, 9-12, 14-21, 23 and 24 is/are rejected.
- 7) ☒ Claim(s) 22 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-945)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

6 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 6, 7, 9-12, 14-17, 19-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cobb et al. US 5,054,954.

Cobb et al. discloses a roadway barrier comprising:

A structural framework (36, 38, 40-44), for resisting collapse of the barrier in response to impact of a vehicle.

A plurality of panels (14) mounted to opposite sides of the barrier for deflecting vehicles on impact with the barrier.

Wherein the structural framework comprises:

Upright members (36) at opposite ends of the barrier and at least one upright member (36) between the upright members at the ends.

A longitudinal member (48) extending along the length of the barrier and connected to each of the upright members.

Wherein the internal structural framework provides sufficient rigidity for resisting collapse of the barrier in response to a vehicle impact.

The principal function of the side (14) is to deflect a vehicle on impact; and the side panels do not make a substantial contribution to the rigidity of the barrier.

Wherein the use of a filler material is a preferred option but not essential to the invention. What Cobb et al. does not disclose is the mass of the barrier per unit length. However, Cobb et al. discloses "Each panel (14) is formed out of 14 gauge mild steel sheet which is such that it allows deformation of the panel but will resist penetration of the panel under the average type of impact...other materials, such as synthetic plastics materials, resin impregnated materials, composites and the like may also be used. Therefore, it would have been obvious to one of ordinary skill in the art, to form the barrier from plastic or the like, to facilitate placement and handling of the barrier. See Col. 8, Ins. 43-50.

With respect to claim 3 Cobb discloses the interconnected arrangement of upright members (36) and the at least one longitudinal member (48) provides the internal structural framework with sufficient rigidity for resisting direct collapse of the barrier in regions of vehicle impact and from uncontrolled twisting of the barrier around the longitudinal barrier axis. See Col. 7, Ins. 45-50.

With respect to claims 6, 7, 9-12 Cobb discloses "Each panel (14) is formed out of 14 gauge mild steel sheet" and that the upright panels (36) are made of steel sheets. Wherein the upright members (36) comprise sections (38) to which the side panels (14) are connected. See Col. 11, In. 64-Col. 12, In. 44.

With respect to claims 14-16 Cobb discloses the longitudinal member (48) is positioned along the top of the barrier. See Col. 12, Ins. 58-65.

With respect to claims 17, 23 Cobb discloses the upright members comprise at least one plate (44) having a respective opening (46) which is sized to receive a pin (40) to connect adjacent portions of the barrier. The upright members (36) being positioned at the ends of the barrier segments and there between. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to position upright members (36) of Cobb et al., midway between the ends of the barrier, in order to accommodate impacts along the length of the barrier and redirect vehicles back into the lane of travel. See Col. 12, ln. 30-44.

With respect to claims 19-21 Cobb discloses the side panels (14) comprise a series of lengthwise extending corrugations (17) that define panel ribs. Wherein the side panels (14) may include a lower side panel (20), on each side of the barrier, that prevents vehicle tires from penetrating the barrier. See Fig. 2. Wherein the side panels (14) diverge outwardly from each other when viewed from the ends of the barrier.

6 Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cobb et al. US 5,054,954 in view of Anderson US 2003/0086761 A1. Cobb discloses essentially all that is claimed, to include the use of attachment openings (39) disposed on the upright members (36). What Cobb does not disclose is how the barrier is moved from place to place.

However, Anderson teaches it is known to attach a lifting ring (30) to an opening in a multi-purpose barrier member, in order to facilitate lifting the barrier with a crane or the like. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to provide the barrier of Cobb et al., with a lifting ring, as taught by Anderson, in order to facilitate lifting the barrier with a crane or the like. See [0022].

Allowable Subject Matter

6 Claim 22 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Amendment

4. The amendment filed 6/15/2011 has overcome the prior art of record. The amendments necessitated a new search of the prior art, which has provided the reference to Cobb et al.

Response to Arguments

5. Applicant's arguments with respect to claims 1-24 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

6 **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to RAYMOND ADDIE whose telephone number is (571)272-6986. The examiner can normally be reached on 8am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 571 272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system.

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Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Raymond W. Addie/
Primary Examiner, Art Unit 3671

7/29/2011